and providing that information. And if you had materials, you can drop them off either with Graham or Shannon outside.

MR. NILLES: Thank you.

MR. HARNETT: We'll be taking a 15-minute break right now and start up shortly after 11:00.

(Recess.)

MR. HARNETT: I'd like to welcome our next speaker, which will be Bill Wilson of the Environmental Integrity Project.

If you could go right ahead, and I'll give you a two-minute warning when we get to the end of your first 15 minutes.

MR. WILSON: Thank you. Good morning. It's a pleasure to be here, and I appreciate the opportunity to talk to you all.

I just want to give a little idea of my background. I'm an engineer in Texas. I've got 19 years' experience. I started in '85 with the Texas Commission on Environmental Quality, used to be the Texas Water Commission back then; worked as a RCRA permit writer, went on to be an environmental manager at Portland Cement Plant just south of Dallas, and that permit operated our

Permit No. 1.

And then for the last five years, I've been an air quality engineer for American Electric Power. Until May of this year, I handled seven power plants with 17 units and 4100 megawatts capacity. I handled all of recordkeeping and reporting, permitting under Title V, as well as state permits. I've got a B.B.A., a B.S., an M.S.

What I see as the benefits of Title V is that it incorporates these NSR operations, which for the facilities I handled didn't happen until late 2003. That requires the certification, compliance for all the air permits, and these facilities have many permits at each facility. So it requires a more comprehensive look at the whole compliance issue.

What I see as a problem is still ahead; reliance on factors and estimates and models, and there is a lack of oversight by the agencies. Many reports are submitted, there is several agencies involved, and there is very little coordination.

Some examples are the Welsh Power Plant operated by AEP in East Texas. It has a name

plate capacity of 512 megawatts net, but it's reporting to the DOE that it actually operates at 528 net megawatts. The heat input is listed in the NSR permit, which was incorporated in November of 2003, and there is data, coal input data and SIMS data showing that Welsh operates 30 percent over its maximum heat input.

Based on my understanding of EPA's routine maintenance, repair, and replacement final rule in October 2003, that triggers -- you cannot exceed heat input without triggering in NSR.

There was a Title V compliance certification due on May 7th. I discussed the heat input and other deviations with the TCEQ both in Austin and the regional office. The TCEQ advised that exceedance of the heat input must be reported as a deviation. The company deliberately refused to report this, as well as other deviations from the Title V permit on the annual certification. They submitted a false certification on May 7th, and they terminated my employment on May 7th.

Same thing is at Pirkey Power Plant. That's a lignite-fired plant. The original PSD

application indicated 640 net megawatts. They're reporting to DOE that they're operating at 660 net megawatts. They're actually operating higher than that. Those increases are due to a change in method of operation by operating at over pressure. This leads to frequent start-up, shutdown malfunctions, and increased emissions by operating above the original designed levels.

Overreliance on estimates and factors instead of valid stack tests, an example at Welsh is the CO limits. The original application was 316 pounds per hour. The original permit limit was 700 tons per year. There was no stack testing for 22 years.

In 2000, stack tests were performed. The actual emissions were over 11,000 pounds an hour, and the yearly emissions were 18,000 tons per year. That means that the emissions were underreported and fees were underpaid for over 20 years.

Same thing with Welsh particulate matter. Welsh is a three-unit plant. There is three coal-fired units. There were original tests shortly after construction in the '70s, and no

other tests that I'm aware of. There were four tests done in the '70s; three out of four measured only front-out emissions. There were no tests while SIP-blowing, there were no tests while load-ramping, yet COMS data record frequent opacity events during those periods.

So the testing is not following EPA's national stack test guidance issued in February 2004. They are not measuring emissions at the worst-case conditions. So again they're underreported. And what is concerning to me is that management knows this. This is from an e-mail dated April 13th, 2000, and I've included this e-mail in the materials submitted today.

The engineer says, "We have several limits on the new Welsh air permit that are not reasonable. CO is one. Pound per NMBTU particulate is another. We are breaking these limits today. The 28 PPM of CO is unreasonable. The pound per NMBTU of particulate is unreasonable. I did bring this fact up last year, and we decided to do nothing about it."

Same thing with Pirkey VOC emissions. The original PSD application estimate was 5 pounds

an hour. Initial compliance testing in 1985 was 135 pounds an hour. The company was allowed to retest in '86, and the average was 30.72 pounds. The state set the limit at 46.9 tons per year, using the lowest of five runs during that '86 test. Why did they do that?

This is from a letter written by the TCEQ staff:

"Therefore it's my understanding that Mr. Crocker based the annual emission rate on the lowest test result to be on the conservative side and to assist the company to avoid public notice and PSD review."

If they had used the emissions from the '85 test, they would have reported 475 tons per year.

So this was the response from the company to the TCEQ:

"Although we have some reservations about these limitations due to the fact that a stack emissions VOC test taken at reduced load indicated an emission rate higher than that proposed, you have advised that we will not be required to test for VOC emissions in the future."

So it appears that the company and the TCEQ both knew that the procedure and the test results, the limits were not being set properly.

Then every year from 1990 to 1997, a SWEPCO engineer reported violations to the TCEQ. Their permit limit, again, was 46.9. In 1990 they reported a hundred; in 1991, 97.5; '92, 107; '93, 121, et cetera. There was no response from the TCEQ.

These examples indicate a hostile attitude towards environmental compliance by industry. That's been my experience for the ten years that I've worked for industry. They show a lack of monitoring and oversight by the agencies. And I think that results from, again, the lack of resources, high turnover, inexperienced staff, which, again, comes from political pressure.

I think one possible solution would be to require that companies systematically address their environmental management. I know that the practice of American Electric Power is to compartmentalize this information so it's not widely known. They try to limit who knows of

violations so it can easily be covered up and swept under the rugs.

I think that there is a need for additional monitoring and testing of emissions, and I think there is a need for independent audits that would be most effective, if there was already an environmental management system in place, and sufficient monitoring to judge against that system.

This is the best analogy I can think of. It's programs like a three-legged stool with two legs. There is management failures at both the state and industry, and the public input is needed. There is a need for monitoring data and a systematic approach, and if you had both those in place, the public would have the tools it needs to be that third leg of the stool.

Thanks for the chance to talk today.

MR. HARNETT: Kelly? Kelly Haragan.

MS. HARAGAN: Could you kind of go over what you think are the most important tools out of the Title V program that would help improve compliance at facilities?

MR. WILSON: Well, I think there has to be

monitoring data. Clearly there is a lack of stack testing. There is a lack of oversight as to how those stack tests are done. There is a lack of review by the state of reports that are being sent in. So there is a need to enhance those provisions in the permit that would allow hard data and evidence about the status of compliance.

MR. HARNETT: Bob Morehouse?

MR. MOREHOUSE: Yes.

You expressed concerns with monitoring and frequency. Would it be your view that those would be best addressed through a regulatory comment process, administrative process, such as revisiting underlying requirements, or on a permit-by-permit basis?

MR. WILSON: I'd recommend a permit-by-permit basis.

MR. MOREHOUSE: Even though that would lead to inconsistency across the state?

MR. WILSON: I think each facility has to be considered. Type of industries need to be considered, and there is not a one-size-fits-all.

MR. HARNETT: Shelley Kaderly?

MS. KADERLY: Question on the stack testing

element.

For the company that you worked for, what would have been your recommendation on how frequent those stack tests should have been conducted during the Title V permit term? Once a permit term? Once a year? How often?

MR. WILSON: Well, for example, with particulates, I know that there is Triboelectric meters that are available to measure particulates continuously, and I would have recommended that.

MS. KADERLY: So the more frequent, the better.

MR. WILSON: Well, continuous monitoring is better than infrequent monitoring.

MS. KADERLY: Thank you.

MR. HARNETT: Verena Owen?

MS. OWEN: Thank you.

I think your example, at least from my perspective, was kind of the example that environmentalist's nightmares are made out of.

When you said that you think the situation could have been remedied -- and I hope it has. You didn't talk about that -- no.

By increased public input and public

participation, what kind of tools do you think the public would need to address this?

MR. WILSON: Well, I think you need to have sufficient monitoring stack testing data and compare that against this system that's in place. There is no system of environmental management at the largest electric utility in America.

MS. OWEN: Can I have a follow-up question? Can you give me a little bit of understanding what you would consider the environmental management system?

MR. WILSON: Well, there is an international standard, IS0 14001, that talks about how to establish a management system. That's what I would recommend. That companies develop systems that meet that international standard, ISO 14001.

MS. OWEN: Thank you.

MR. HARNETT: Don van der Vaart?

MR. VAN DER VAART: I wasn't sure whether I missed something. Have these facilities gotten their Title V permit, and did they certify compliance, or are you referring to periods of time prior to their Title V permit?

MR. WILSON: No, these facilities all have

Title V permits, and they certify compliance falsely.

MR. HARNETT: Kelly Haragan?

MS. HARAGAN: I'm sorry. I left that up.

MR. HARNETT: Okay. Thank you very much.

The next speaker is Scott Evans of Clean Air Energy -- or Engineering, rather.

MR. EVANS: Good morning. Thank you.

I do have a -- some PowerPoint presentation here. I don't know if it's ready or not. I can go ahead without it, if you're not.

MS. COX: It will just take one second.

MR. HARNETT: Sure. Go right ahead.

MR. EVANS: While she's doing that, I'll just give you a little information about myself.

My name is Scott Evans. I work for Clean Air Engineering, and we do a lot of things related to air quality; testing and measurement. I'm involved with the consulting side. We do a lot of work with Title V. Early on we did a lot of work with the actual permit process. Now most of my time is spent with implementation of Title V.

We work in all 50 states, so I've had an

opportunity to see different state programs in operation, as well as different industries, and sometimes we even work for environmental organizations. So anything involving air quality is what we're involved in. I've been doing this for about 20 years or so.

Are we set, or should I --

MS. COX: One minute.

MR. HARNETT: That's fine. We won't count this time against you.

MR. EVANS: Oh, that's all right. You can just cut me off whenever you want to.

MR. GOLDEN: He says that now.

MR. HARNETT: We'll see later.

MR. EVANS: These slides, by the way, will not add anything to the written record really. They're more for the benefit of those in the room. So I will provide some written material within the next couple of weeks.

MS. COX: This one?

MR. EVANS: Yes. There we go. Okay.

When the Title V program first -- I've been involved with this since the early '90s, when Title V and enhanced monitoring and all that

discussion was going on. The program came in with a lot of promise, and we all had very high expectations for Title V, some of which were met, and some of which I think we still need to work on. I'm going to just briefly touch both of those topics today. I'll start with a few of the things that work and a few of the things that don't work.

I had a chance to review some of the testimony from the earlier hearing that you held, as well as some this morning, and I think sometimes when you listen to some of the critics of Title V, it may look a lot like this next slide, but that is not what Title V is about, and I don't think that's certainly what's going on. So let me talk first about some of the things that are working in the program.

For me, having to review a lot of Title V permits and actually working in permitting before the Title V program, also, I think one of the great success stories has, in fact, been consolidation. I know there are certainly issues with incorporation by reference. My personal belief on that is that state and federal regulations should be incorporated by reference

and preexisting permits should not. It's simply too difficult, as I think other people have brought out, to track down if you have five, six, seven, eight, ten, twelve preexisting permits, even to locate them can be a difficult situation.

Ideally the situation would be to incorporate the state requirements and a state-only portion of the permit, although, again, that's a little problematic that we've had in working with some of the states, to get state-only requirements listed in the permit as state-only requirements. I think it's the inclination of some of the regulators to push as much over on the federal side as possible.

But certainly it makes review much easier now than it has been in the past. But we all want to make sure the Title V permit doesn't just become a table of contents for preexisting permits that may or may not be accessible to review.

One of the things that it's really done is to focus attention on air emissions. I think much more so than previously. Because of federal involvement in the Title V program, I think there

is a much greater awareness at the plant level and a much greater awareness at the management level that there are these issues.

I mean, I've been involved in a lot of training programs for plant personnel on Title V obligations, and that kind of thing just didn't happen prior to Title V. You saw very little effort on the part of many facilities, not all, but many to really educate their staffs on what their obligations under the air program are, and I think that's much more prevalent now than it has been in the past.

This has been another issue here. This issue of continuous compliance, which is contentious. It's certainly the focus of a lot of attention on facilities now. I think there is a general understanding that at least it's EPA's expectation that compliance be continuous.

And from a practical standpoint, in the past compliance, I think, was viewed as an event. It would happen once a year, once per permit term, and as long as that event was concluded successfully, then the assumption was that the plant was in compliance. Then if other things

happened in between the five or, you know, one year or five years, whenever the stack test was, that didn't really count as compliance. Compliance was your annual stack test or your once-every-year stack test.

Today it's, I think, quite a bit different. Compliance is not viewed as a discrete event that happens at a certain time when the stack testing folks show up. It is something that occurs all the time, and it's a mode of operation of the facility, rather than a discrete event. And that, I think, has been a remarkable change in the decade or so since we started with Title V. I think that has had a mind-set, kind of a paradigm shift in thinking about some of these issues.

One of my pictures didn't come out.

Upper management involvement certainly is another -- another really key component here. The fact that it's a plant manager or a vice president of EH&S that has to sign these puts a lot more attention on air issues than there had been in the past, without a doubt. I've talked to many, many more VPs and plant managers after Title V than I ever did before, because in the past it

was always, you know, it's the environmental guy that handles that, and he'll answer all your questions.

This is kind of related to the last one. The effective way to implement Title V, and the way that I think it's being done at facilities that are doing well in meeting their Title V commitments, it integrates compliance with day-to-day operations. Compliance is not something that's handled by the environmental department and it's separate from what goes on day to day at the plant. I think, at least in the clients that I'm working with, compliance is seen as an obligation of the people that run the plant on a day-to-day basis far more than it had been in the past.

I don't want to characterize all industry as not complying before Title V and complying now. I'm talking about general trends. I see much more integration of compliance with operations than I had in the past, and, again, I believe that's an absolutely key component to cost-effective compliance with Title V obligations.

A couple of areas of concern here. One of the primary issues that I deal with all the time is the tendency of permit writers and agencies to add additional requirements at the -- during the permit writing process. And I certainly understand the inclination to do that, but in some respects that's not what Title V was supposed to be about.

Title V was about aggregating existing requirements into a single location. While that is being done, there is a lot of additional, both requirements and emission limits, that are added to the permit, and a lot of times without -- without adequate opportunity for discussion. It seems to be that that's just what's expected in a Title V permit.

One of the key things -- go to the next slide here, because the two of these two are related here -- actually, it's not, but I'll get that in a minute.

One of the key additions that I see over and over again is the conversion of limits from maybe ton per year or pound per million BTU or process weight times the limitations to a

pound-per-hour limitation. In some states it's actually required, it's part of the Title V permit application, that you actually have to state your emissions in pounds per hour, and those become enforceable commitments when that permit becomes finalized. That in many cases these are new limits that did not exist under any previous permit.

The question then becomes for some of these sources, how do you determine what these emissions are in a pound-per-hour basis? For some sources it may be easy. For other sources it may be almost impossible to come up with some kind of pound-per-hour estimate. But yet those become part of the permit under this process, and that is very, very, very common.

The second is the addition of new monitoring. I'm going to talk a lot more about an aspect of this in a little bit, but this goes with the new requirements. Very often new kinds of monitoring are added. Even when there is existing monitoring that takes place, additional requirements are added.

Now, certainly in the case when there is

no monitoring, there is some ability of the EPA to go in under the periodic monitoring provisions and require some additional monitoring, but what we've seen is that that happens far more often than under those limited circumstances.

This is where I want to spend a little bit of time here. I know this came up in some of the previous testimony here. The focus on monitoring as being definitive; the definitive determination of compliance. I hear that a lot. I hear that monitoring must be a definitive. And there is no question that monitoring is extremely important and an absolutely critical component of compliance, but I did not believe that it was the intent of Congress, and I do not believe that it is the intent or written in the Clean Air Act or the EPA regulations, that monitoring is the sole determination of compliance.

If that were the case, we would not need compliance certifications. The reason we have a structure set up under Title V the way we do is so source owners and operators can look at all of the data that is available, which includes monitoring, which includes proper operation of the source,

which includes repair, maintenance, and inspection regimes at these facilities. All of that information together is considered by the source, and a compliance determination is made and certified by the source.

We hear a lot of talk about the intent of Congress, and I don't know how many of you have read the Senate report that accompanied the Clean Air Act, but if you haven't read that document, I would encourage you to do it because Congress really very specifically provided that in many cases means other than monitoring, including recordkeeping, including inspections, including other things are perfectly valid determinations of compliance. That you don't necessarily have to have a continuous emission monitor strapped onto every 2-inch process vent in order to be sure or reasonably sure -- and it's important to know that Congress used the term "reasonable assurance of compliance," not an absolute assurance of compliance -- that those are perfectly acceptable and well within the intent of Congress. So I would certainly encourage you to take a look at that document, if you haven't.

I want to make sure I'm covering all these things here.

Some of the discussion revolved, I know, in the past on this committee around the CAM proposal and whether it, in fact, was namby-pamby or not -- I don't know if we said that -- but my belief is that the CAM ruling or the CAM rule, I think, really captures the essence of what the Title V program is all about and what Congress intended for Title V monitoring. I know Peter Westlin, when we put that rule together, talked a lot about reasonable assurance of compliance.

And what's really important, and it's not anywhere in the rule, but he used this language a lot, is for source owners to be as aware of the operation of their pollution control devices and what they're emitting as they are about operating their process. That you don't -- you don't treat your pollution control device like the redheaded stepchild out on the side of the plant somewhere. That you put as much care and attention and effort into that as you do to your reaction vessels and the things that you use to make money every day.

I think that's a reasonable approach to take. That these are pieces of process equipment just like everything else. If you put that focus in on those, then you can achieve a reasonable assurance of compliance.

A good example is baghouses for particulate control. In most cases there is no need to put continuous monitoring on a properly operating baghouse. Certainly you can put a bag leak detector on something, but when a baghouse is operating properly and it's designed properly and you know that you're in compliance when it is designed properly, as long as you continue to assure that that baghouse is operating properly, you do some inspections, you don't see any particulate coming off of that, you have a reasonable assurance that that's in compliance.

But you have no SIMS on there. You have no opacity monitor on there 24 hours a day, which is kind of a waste of money if you have five years' history, for example, of absolutely no emissions coming off of this source because the baghouse is operating properly. To invest the money and effort to maintain a continuous emission

monitor on a source like that doesn't always seem to make a lot of sense.

Another key thing I think needs to be brought up, in some of the previous testimony people have talked about the absolute accuracy of monitoring. We want to improve the absolute accuracy of monitoring. And I think it's important to recognize that the way that the permit program is set up, emission limits are established to protect human health at a certain level, whatever level that is. And of course you can agree or disagree on where those limits are set. But after those limits are set, the obligation of a source is not necessarily to quantify down to the last cubic nanometer what those emissions are, but simply to report whether they are above or below the line that you set.

The discussion should be -- if you're going to have a discussion, the discussion should be on where you set that line, not necessarily on exactly to the nth degree what those emissions are. If you're operating at 20 percent down -- here is your limit way up here, and you're operating way down here (indicating) with an

80 percent compliance margin, it really doesn't make a lot of difference whether your monitoring is plus or minus 2 percent, plus or minus 5 percent, or plus or minus 10 percent. You can say with very reasonable assurance that you are in compliance.

And that's important because it provides flexibility for sources to choose among different kinds of monitoring; not necessarily the most expensive, the most incredibly accurate monitoring, but monitoring that assures compliance. And that's what the important thing is, are you above or below the line.

I think I have one last slide, and hopefully I can squeeze in these last two minutes here. We'll skip this one for now, get to the very last one; one more.

Just a thought here. This is data from an actual facility, and I wanted to -- there was some discussion earlier on insignificant sources, and I wanted just to show you, this is baghouses at a particular facility that we looked at here. And you can see the relative size of these different units. I guess I just wanted to show

you the typical profile of a source. You have very, very, very many small -- you can call them insignificant -- small units that contribute a relatively small percentage of the plant emissions. In this case you have 70 percent of the sources contributing 25 percent of the emissions.

On the other side of that, you've got only 30 percent of the sources that are accounting for 75 percent of the emissions. From an environmental standpoint, from a cost-effectiveness standpoint, it makes sense to spend the time, the effort on the 75 percent of those plant emissions. I'm not saying you ignore the other ones, but we're talking about not necessarily applying exactly the same criteria to the 30 percent of the sources as you are to the 70 percent of the sources.

You can get a reasonable assurance of compliance overall. Focus the effort on where the emissions are, not necessarily on each little 2-inch process vent or each little baghouse that's on top of a silo somewhere, and I think you can get a reasonable assurance of compliance under

Title V. I believe that's the last one.

MR. HARNETT: Okay. Verena Owen?

MS. OWEN: Thanks for coming out here today and talking to us. We appreciate it.

I have, I think, two clarifying questions. When you started talking about the concerns, you talked about conversion of limits to pounds per hours, and then you said from other standouts, and then you added that did not exist prior. So I can't in my mind understand what -- by a conversion would then happen if nothing existed prior to the conversion.

MR. EVANS: The pound-per-hour limit did not exist. That's substantially a different standard than if you had a ton-per-year limit. What we've seen -- I think someone brought this up earlier -- a lot of times in that conversation they simply took that ton-per-year limit and divided it by 12 or 8,760 or whatever number they needed to get, and that is a severely more restrictive limitation than ton-per-year limit.

A ton-per-year limit is like an annual average. You can agree or disagree on what the averaging link should be, but there should -- if